VIRGINIA LAW REGISTER

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Virginia is not alone in having trouble over examinations for admission to the Bar. The New York Bar Examiners come in for some rather sharp criticism in the annual report of Dean Harlan F. Stone, of the Columbia Law School. A portion of his report reads as follows:

There Are Others.

> "For many years the methods of conducting Bar examinations in New York have been a reproach to this State and a distinct detriment to sound legal education. The practice of the Bar Examiners of asking questions based exclusively and minutely on statutes or decided cases, and of judging the answers on the basis of their 'correctness,' places a premium upon memorization by the candidate and affords no adequate test of his ability to reason in a legal way or to apply his knowledge to a new state of facts, which are, after all, the essential qualifications of the lawyer. The law schools are devoting themselves to the development of these qualities in the student, and it is unfortunate that no substantial effort is made by the Bar Examiners to test the efficiency of the candidates for admission along these lines. Preparation for Bar examinations as they are now conducted is nothing more than a cramming process, in which the student with the photographic memory has the decided advantage over the candidate who possesses higher faculties and has the better training. The result is that many unfit candidates are annually admitted to the Bar, whereas others undoubtedly better fitted are rejected."

We think the learned Dean must have been a careful reader of the REGISTER, for the conclusions he draws are not unlike those the Editor-in-Chief has reached long since and given expression to in the pages of this journal. We see no reason to change these views; i. e., that examinations for admission to the Bar should not be merely those which make a good memory the test, but that the evidences of thorough acquaintance with fundamental princi-

ples and answers which indicate powers of reason and ability to use those powers ought to count as much as mere correctness in answering questions.

We are glad to have a coadjutor as able and influential as Dean Stone and hope that his words of wisdom may find a good lodgment where they will do the most good.

A School for Legislation.

The Columbia Law School is peculiarly fortunate in having a fund which has permitted the establishment of a legislative Drafting Bureau in connection with its work. In speaking of this Dean Stone says:

> "The gift of the university for the promotion of scientific study and investigation in legislative drafting, mentioned in my report last year, has already established its utility and in a large sense its educational value. During the past year the fund had rendered important service in preparing numerous legislative acts, including, for example, the Workingmen's Compensation act, passed by the Congress of the United States; the proposed amendment of the New York State Constitution, authorizing a Workman's Compensation act, adopted by the New York State Legislature; a bill now pending before Congress revising the laws relating to foreign shipping and the safety of passengers sailing upon the ships entering American ports; in co-operation with the State Commission on Uniform Laws, a Uniform Corporations act; and it is now working with various public bodies and legislative committees in the preparation of important legislative bills."

What an inestimable boon to humanity would be the establishment of such a Bureau in each State of this Union! No one can pick up a volume of State statutes without seeing page after page of useless, careless and even vicious legislation. Well meaning attempts to cure evils thwarted by shrewd lobbyists who take advantage of the ignorance or carelessness of the average legislator and insert "harmless" clauses which emasculate statutes; bungling devices to accomplish good, which fail despite the best intentions on account of the lack of knowledge of the draughtsman; these can be seen over and over again as one turns the pages of

new "Acts." Had we such a Bureau in Virginia composed of able, learned men law reform would come before we knew it and multitudinous burdens be lifted from the shoulders of judges, lawyers and the body politic.

The New Equity Rules in the Federal Courts.

We hope in a subsequent number to publish the new Rules in Equity Proceedings lately promulgated by the Supreme Court of the United States and which after seventeen months of arduous labor have been given to the public. They take effect on February 17, 1913, and of course apply to all Federal Courts. Their object has been to simplify, expedite and cheapen the conduct of all equity cases and we have no doubt will easily accomplish these much to be desired objects. The Chief Justice and Lurton and Vandeventer, JJ., were the members of the committee which prepared these rules. Chief Justice White, reared under the Code Civile of Louisiana, brought to the deliberations of the committee the knowledge of the many excellent rules which render proceedings under that Code so simple and easy. But the committee did not rely alone upon its own wisdom. They consulted the Lord Chancellor of England, who, with prompt courtesy, made many valuable suggestions. Every federal judge in every State of the Union was asked to make suggestions and Bar Associations were urged to give expression to their views. Voluminous were the briefs which came in and W. J. Hughes of the Department of Justice digested them all for the committee.

The changes instituted by the new rules were broadly divided by the Chief Justice under four heads. The exercise of power by the federal courts in equitable cases was the first. The second great change, directed particularly at the modes of pleading, eliminates unnecessary preliminary steps and brings the parties quickly to issue. This change is modeled after the simplified forms now obtaining in New York and in the Chancery Courts of England. The modes of taking testimony, particularly in patent and copyright cases, where expert witnesses are necessary, is modified in the third reform. The intention of the court here,

said the Chief Justice, was to make the taking of this kind of testimony more simple and less expensive. The fourth reform also dealt with the taking of testimony. It greatly limits the power of masters in equity and is expected to bring cases more directly before the courts. In the same connection the new rules will compel the reduction of the size of records sent to a superior court, requiring them to be transposed into narrative form instead of the bulky and cumbersome question and answer.

Still another change included in the new rules is restriction in the use of preliminary injunctions without notice to the party enjoined, and controls the issue of temporary restraining orders. In his summary of the rules the Chief Justice did not explain this change, and its scope is not yet fully understood.

The text of the new rule on injunctions reads:

No preliminary injunction shall be granted without notice to the opposite party, nor shall any temporary restraining order be granted without notice to the opposite party unless it shall clearly appear from specific facts shown by affidavit or by the verified bill that immediate and irreparable loss or damage will result to the applicant before the matter can be heard on notice.

In case a temporary restraining order shall be granted without notice in the contingency specified, the matter shall be made returnable at the earliest possible time, and in no event later than ten days from the date of the order and shall take precedence of all matters, except older matters of the same character. When the matter comes up for hearing the party who obtained the temporary retraining order shall proceed with his application for a preliminary iniunction, and if he does not do so the court shall dissolve his temporary restraining order.

Upon two days' notice to the party obtaining such temporary restraining order, the opposite party may appear and move the dissolution and modification of the order, and in that event the court or Judge shal proceed to hear and determine the motion as expeditiously as the ends of justice may require. Every temporary restraining order shall be forthwith filed in the clerk's office.

The new anti-injunction rule follows in a general way the rules of the Federal Court in the Ninth Circuit, which comprises the Pacific Coast States.

This rule has been hailed as almost revolutionary by the leaders of the so-called Labor Party, but we do not see anything in it over which one class can rejoice more than another. It still allows preliminary injunction to be issued without notice where it clearly appears from specific facts shown by affidavit or by verified bill that immediate and irreparable loss or damage will result to the applicant before the matter can be heard on notice. This is as it should be and in many jurisdictions it has been and is a good, sound, reasonable precaution. It can work no hardship to anyone and should not and we do not believe will work to the advantage of any man or set of men.

Law Reform.

We are pleased to see the adoption of these Rules in Equity by the Supreme Court, not only as a distinct step forward on the part of that great tribunal, but because the force of the great example of this court will make itself felt throughout the Union. Law procedure needs reformation and simplification far more than equity and if our courts which have the right to do so, would apply themselves to the framing of rules for a simple, expeditious and easily understood system of law procedure future generations would arise and call them blessed. We have made several legislative attempts, noticeably the excellent Act printed on p. 883, Vol. XVII, of the REGISTER, and which was successfully blocked by parties who thought it dangerous to certain "great interests." But "great interests" are not looming up quite so largely as framers or foilers of Legislation in these latter days and we may yet expect this Act or one similar to it to be upon our statute books in the near future. "So mote it be."

A Word of Kindly Caution.

It is not often that the supreme courts—especially the Supreme Court of the United States—indicate in general terms to the lower courts what they ought not to do. But in a case decided November 11, 1912, the Supreme Court of the United States made a kindly suggestion to the much belabored Commerce Court which we have no doubt that body will

carefully consider. The Supreme Court, speaking through Mr. Justice Holmes, alluded to the fact that the Commerce Court had based certain orders upon its own investigations rather than upon the testimony of witnesses. This was in connection with an order requiring the Baltimore & Ohio Southwestern Railroad company and the Norfolk & Western Railway company to grant physical connections in Southern Ohio to the Cincinnati & Columbia Traction company, an interurban electric road. The commission held that the electric was a "lateral branch line of railroad," within the meaning of the law, but the court sustained the Commerce Court in holding that the electric line appeared to have been built without regard to the existence of the steam roads, and was not a "lateral branch."

"We remark that the commission stated in its report that it based its conclusion more largely upon their own investigation than upon the testimony of witnesses," said Justice Holmes. "It would be a very strong proposition to say that the parties would be bound in the higher courts by a finding based on specific investigations and in the cases without notice to them. Such an investigation is quite different from a verdict from a jury, taken with notice and subject to the order of a court, and different again from the question of the right of the commission to take notice of results reached by it in other cases, when it's doing so is made a part of the record and the facts thus noticed are specified so that matters of law are saved."

The court did not pass upon the question of the power of the commission to require steam roads to grant connections with electric lines as such.

We think this suggestion not only timely, but very much needed. No judge can safely be a witness and decide a case upon his own evidence. And yet the Commerce Court practically did this and there are other tribunals which are being established throughout the country which render *judicial* decisions based upon their own observations. Some of these tribunals appointed under provisions of fundamental law are clearly given this right so to decide; but it is a dangerous privilege and one which cannot be too carefully guarded.

English Divorces.

Few Americans realize what a revolution is going on in the British Isles in many matters legal as well as political. And few still who have not considered the subject are aware with what injustice woman has been treated in matters of divorce. A man could obtain an absolute divorce from his wife for adultery on her part; she was entitled only to a separation for adultery on his part. But adultery was the only cause for divorce. A commission—consisting of twelve members, the Archbishop of York being one of them—was appointed some time since to investigate the whole question. This commission has now made its report. The majority commends that the two sexes be placed on an equality before the law with regard to the grounds for divorce, which shall be adultery, desertion for three years, incurable insanity after five years' confinement, incurable drunkenness, found to be incurable after three years.

From the issuance of the first separation order, it is recommended that all divorce cases shall be heard by a judge alone, who is empowered to close the court during the hearings and prohibit the publication of details.

The majority report also recommends that no report on matrimonial cases shall be allowed until they are finished, and that the publication of the portraits of the parties thereto shall be prohibited. The report states that the evidence taken during the investigations showed that the proposed extension of the grounds for divorce, far from tending to lower the standard of morality, has had a contrary effect, and that the present stringent restrictions and costliness of divorce are productive of immorality and illicit relations, particularly among the poorer classes.

Nine of the Committee signed this report. The Archbishop of Canterbury and two others oppose the extension of causes for divorce on the ground that this is destructive of marriage ties and family relations and contrary to the principles of the Christian faith in its relation to marriage.

Why the Archbishop in view of the reasons given for marriage in the Church of England Prayer Book (left out in the American Episcopal Church marriage service), should take this ground can only be explained on the ultra conservativeness of the clergy in matters of this kind.

The Charlton case is, in our judgment, one more to be looked upon as a misfortune and disgrace rather than as a curiosity.

Curiosities of Extradition.

This man, an American citizen, killed his wife in Italy—the murder being admitted—escaped to this country, and yet for more than a year his case has been before the courts on the question of his extradition. Italy it seems refuses to extradite her own citizens who commit crimes in other countries, claiming that she exercises the right to try them in her own tribunals (which are unhampered by constitutional limitations) for offenses committed out of the kingdom. Charlton therefore claims that the United States should not deliver him over to Italy. If he is not extradited he will go unwhipped of justice and our government will occupy the horrible situation of releasing a murderer because he is an American citizen, and for no other just reason.

But the curious case is that of a Hungarian, who committed a robbery in New York and fled to his native land where he was arrested. According to the Austria-Hungarian law no subject of the empire can be extradited. But Hungary did not release him. The evidential documents were turned over to the Austria-Hungarian Consul General—the man was tried in Vienna on depositions and given two years and a half in prison. Foreign nations have very little sympathy with our views of the rights of criminals. They may work occasional injustice, but they check crime. "It is expedient sometimes that one man die for the people."